

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

Caleb Whitfield,

Plaintiff,

Case No. 3:23-cv-023

v.

District Judge Thomas M. Rose

Correction Officer Gustave,

In his/her individual and official capacity,

Magistrate Judge Karen L. Litkovitz

Defendant.

**ORDER OVERRULING OBJECTION (ECF 38), ADOPTING REPORT
AND RECOMMENDATION (DOC. 35), DENYING MOTION FOR
LEAVE TO JOIN COUNTS, (DOC. 27), AND GRANTING IN PART
AND DENYING IN PART PLAINTIFF’S MOTION TO AMEND. (DOC
26.)**

Before the Court is *pro se* Plaintiff Caleb Whitfield’s motions “for leave to Request the Court to Review and Consider both motions to Amend and to Join Counts Simultaneously” (Doc. 26), “for leave to Join Counts” (Doc. 27), and for default judgment (Doc. 29), and a Report and Recommendation. (Doc. 35).

Plaintiff, an inmate currently at the Toledo Correctional Institution, in Toledo, Ohio, brings this *pro se* civil rights action for alleged violations of his rights while he was a pretrial detainee at the Montgomery County Jail (Jail), in Dayton, Ohio. Upon a *sua sponte* review of the complaint to determine whether the complaint or any portion of it should be dismissed

because it is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief, *see* Prison Litigation Reform Act of 1995 § 804, 28 U.S.C. § 1915(e)(2)(B); § 805, 28 U.S.C. § 1915A(b), Magistrate Judge Karen L. Litkovitz recommended that the Court:

1. **DENY** Plaintiff's "Motion for leave to Join Counts." (Doc. 27.)
2. **GRANT** in part and **DENY** in part Plaintiff's motion to amend, (Doc. 26,) by **GRANTING** Plaintiff thirty days from the entry of this Order to submit an amended complaint consistent with the Report and Recommendation that asserts only the following claims against the following defendants:
 - a. Count One of Plaintiff's original complaint's (Doc. 1) Fourteenth Amendment excessive-use-of-force claim and First and Fourteenth Amendment claims relating to the discontinuation of Plaintiff's December 21, 2021 video visit against defendant Gustave for damages in his individual capacity;
 - b. Count One of Plaintiff's original complaint's (Doc. 1) Fourteenth Amendment failure-to-intervene claim for damages against Defendant Molton in his individual capacity; and Count Two of Plaintiff's original complaint's (Doc. 1) Fourteenth Amendment due process and conditions-of-confinement claims for damages against Defendants Bemis and Eaton in their individual capacities;
 - c. A *Monell* claim against MCBC based on its custom of tolerance or acquiescence to the excessive use of force of MCJ employees.
 - d. That Plaintiff shall complete and submit a summons form and USM-285 for MCBC.
 - e. Once received by the Court, the United States Marshal **SHALL SERVE** on MCBC a copy of the original complaint (Doc. 1), amended complaint, the separate Order issued granting plaintiff *in forma pauperis* status (Doc. 10), the Court's prior Report

and Recommendation and Order adopting it (Docs. 11, 19), this Report and Recommendation, and this Order adopting it.

(See ECF 35.) Plaintiff objected on April 22, 2024. (Doc. 38.) Defendants Bemis, Eaton, Gustave, Molton, and Streck responded on May 6, 2024. (Doc. 39.)

The Court has reviewed the findings of the Magistrate Judge and, pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), this Court has made a *de novo* review of the record in this case. Upon consideration of the foregoing, the Court **ADOPTS** the Report and Recommendations (ECF 35) in its entirety.

DONE and **ORDERED** this Monday, May 20, 2024.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE